



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 8

[Docket No. USCG-2011-0745]

RIN 1625-AB79

International Anti-fouling System Certificate

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its vessel inspection regulations to add the International Anti-fouling System (IAFS) Certificate to the list of certificates a recognized classification society may issue on behalf of the Coast Guard. This action is being taken in response to recently enacted legislation implementing the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001. This final rule will enable recognized classification societies to apply to the Coast Guard for authorization to issue IAFS Certificates to vessel owners on behalf of the Coast Guard.

DATES: This final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments and material received from the public, if any, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2011-0745 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2011-0745 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail CDR Ryan Allain, Environmental Standards Division, Coast Guard; telephone 202-372-1430, e-mail Ryan.D.Allain@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

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I. Abbreviations

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|--------|---|
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| FR | <u>Federal Register</u> |
| IAFS | International Anti-fouling System |
| NAICS | North American Industry Classification System |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| U.S.C. | United States Code |

II. Regulatory History

On September 1, 2011, we published a notice of proposed rulemaking (NPRM) entitled "International Anti-fouling System Certificate" in the Federal Register (76 FR 54419). We did not receive any comments on the NPRM. No public meeting was requested and none was held.

III. Basis and Purpose

The Coast Guard is amending 46 CFR 8.320(b) by adding the International Anti-fouling System (IAFS) Certificate to the current list of international convention certificates included in that paragraph. Adding the IAFS Certificate to § 8.320(b) will allow the Coast Guard to authorize

recognized classification societies to issue IAFS Certificates. Authorization will be based on the Coast Guard's review of applicable class rules and applicable classification society procedures. See 46 CFR 8.320(a). For successful applicants, the Coast Guard will then enter into a written agreement with a recognized classification society authorized to issue international convention certificates. The agreement will define the scope, terms, conditions, and requirements of that delegation. See 46 CFR 8.320(c).

IV. Background

The Coast Guard Authorization Act of 2010 at Title X, Pub. L. 111-281, 124 Stat. 3023, 33 U.S.C. 3801 to 3857 (Oct. 15, 2010), directs the Secretary of Homeland Security to administer and enforce the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (Convention). The Secretary has delegated to the Commandant of the Coast Guard her authority under 33 U.S.C. 3803, 3805, 3821-3823, 3842(a), 3852(a)-(e), and 3855 to implement, administer, and enforce the Convention. Section 1021 of Title X (33 U.S.C. 3821) and Regulation 2 of Annex 4 of the Convention call for U.S. Government officials, or an organization identified by the United States, to issue IAFS Certificates to ships whose anti-fouling systems fully

comply with the Convention.

Under the Convention, an "anti-fouling system" is defined as a coating, paint, surface treatment, surface, or device that is used on a ship to control or prevent attachment of unwanted organisms. The Convention is currently focused on reducing pollution caused by organotin compounds used in anti-fouling systems.

Since the mid-1990s, under authority of 46 U.S.C. 3103, 3306, 3316 and 3703, and regulations in 46 CFR part 8, the Coast Guard has authorized recognized classification societies to issue international certificates to vessels. The United States currently recognizes six classification societies for purposes of issuing international certificates: the American Bureau of Shipping (ABS, United States), Det Norske Veritas (DNV, Norway), Lloyd's Register (LR, Great Britain), Germanischer Lloyd (GL, Germany), Bureau Veritas (BV, France), and RINA, S.p.A. (RINA, Italy).

The list of international certificates the Coast Guard may authorize a recognized classification society to issue appears in 46 CFR 8.320. That list currently includes 12 certificates, but does not include the IAFS Certificate.

V. Discussion of Comments and Changes

We received no comments on the NPRM and we made no changes in the regulatory text in going from the proposed rule to this final rule.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has not been designated a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, this final rule has not been reviewed

by the Office of Management and Budget. A regulatory assessment follows:

Under the authority of 46 U.S.C. 3103, 3306, 3316, and 3703, the Coast Guard amends 46 CFR 8.320, to enable the Coast Guard to delegate the activity of issuing IAFS Certificates to a recognized classification society which would act on behalf of the Coast Guard. The intent of this final rule is only to allow for the delegation of IAFS Certification to recognized class societies; it does not impose mandatory actions on the U.S. maritime industry.

We received no comments and found no additional information or data that would cause us to change our regulatory assessment in the "Regulatory Planning and Review" section of the NPRM. We, therefore, have adopted the regulatory assessment of the NPRM as final.

This final rule initiates the process that will allow recognized classification societies to issue IAFS Certificates on behalf of the Coast Guard. Any recognized classification society that wishes to issue IAFS Certificates on the Coast Guard's behalf will be required to request a delegation of authority from the Coast Guard pursuant to the procedures in 46 CFR part 8. In response, the Coast Guard will evaluate the application, and review the applicant's applicable class rules and applicable

classification society procedures, before deciding whether to issue a delegation of authority to the applicant.

Although requesting the delegation of authority to conduct IAFS surveys, inspections, and certifications is voluntary, classification societies will incur minor costs associated with this process. The Coast Guard will also incur costs associated with the evaluation of these requests and the issuance of delegations of authority to recognized classification societies.

The Coast Guard expects that this final rule will potentially affect six classification societies which may request a delegation of authority to issue IAFS Certificates. The Coast Guard used OMB-approved collections of information (1625-0101, 1625-0095, 1625-0093, and 1625-0041) to estimate the costs and burden.

The Coast Guard anticipates that each classification society will take about 5.25 hours to review the rulemaking requirements and prepare the delegation request. The total one-time cost for all six classification societies is expected to be \$2,800 (rounded).

In addition, the Coast Guard will incur a one-time cost to review and approve the requests for delegation from each of the classification societies. Based on the OMB-approved collections of information discussed above, the

Coast Guard will take about 5 hours to review, approve, and issue an order to delegate authority. The Coast Guard will incur a total one-time cost of \$2,200 (rounded) based on OMB-approved collection of information estimates.

The total one-time cost of this rule is expected to be \$5,000 (non-discounted) for classification societies and the Government combined.

This final rule will result in several benefits to the U.S. maritime industry. First, it will result in a reduction of potential wait time for IAFS Certificates. In the absence of delegation of authority to classification societies, vessel owners and operators would experience delays while the Coast Guard processes and issues IAFS Certificates. Combined with the Coast Guard's other activities and responsibilities, such a process would result in an unnecessary and burdensome wait for vessels. By issuing delegation of authority to classification societies, the Coast Guard will not have to redirect resources that would be used for other missions, resulting in a more efficient use of Government resources. Finally, this final rule will mitigate potential consequences to U.S.-flagged vessels due to non-compliance with the Convention, including costly vessel detentions in foreign ports.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard has considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Classification societies affected by this rule are classified under one of the following North American Industry Classification System (NAICS) 6-digit codes for water transportation: 488330 - Navigation Services to Shipping, 488390 - Other Support Activities for Water Transportation, or 541611 - Administrative Management and General Management Consulting Services.

The Coast Guard did not find any classification societies directly affected by this rule that are small businesses or governments with populations of less than 50,000. The predominant U.S. classification society is the American Bureau of Shipping (ABS). ABS is a privately owned non-profit organization that is dominant in its field (Source: 2011 Hoovers,

<http://www.hoovers.com/company/American Bureau of Shipping>

[Inc/rfsksji-1.html](http://www.fishbase.org/Inc/rfsksji-1.html)). Based on publicly available information, ABS has more than 3,000 employees and an annual revenue of more than \$800 million (Source: 2011 Bloomberg, <http://investing.businessweek.com/research/stocks/private/person.asp?personId=28915205&privcapId=4217113&previousCapId=764755&previousTitle=ABS%20Group%20of%20Companies,%20Inc>).

We do not consider ABS to be a small entity under the Regulatory Flexibility Act. The other classification societies affected by this rule are foreign owned and operated.

The Coast Guard expects that this final rule will not have a significant economic impact on a substantial number of small entities. As described in section VI.A. of this preamble, "Regulatory Planning and Review," the anticipated cost of this rule, per class society, is less than \$500. This rule is not mandatory, and classification societies, regardless of size, will choose to participate only if the benefits are greater than the costs.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory

Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult CDR Ryan Allain, Environmental Standards Division, Coast Guard, telephone 202-372-1430 or e-mail ryan.d.allain@uscg.mil. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) because the Coast Guard expects that the number of applications will be less than 10 in any given year.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. It is well settled that States may not regulate in categories reserved for regulation by

the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels) are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).). We have evaluated this rule under E.O. 13132 and have determined that it is preemptive of state law or regulation since Congress intended the Coast Guard to regulate the issuance of international certificates that demonstrate compliance with international conventions requiring antifouling systems aboard U.S. flagged vessels certificated for international voyages, including certificates issued by recognized classification societies. Because States may not promulgate rules within this category, preemption is not an issue under Executive Order 13132.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the

expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 13211 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable

law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraphs (34)(b) and (d), of the Instruction, and under section 6(b) of the ``Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48243, July 23, 2002). This rule involves the delegation of

authority, the inspection and documentation of vessels, and congressionally-mandated regulations designed to improve or protect the environment. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 46 CFR Part 8

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 8 as follows:

Part 8--VESSEL INSPECTION ALTERNATIVES

1. The authority citation for part 8 is revised to read as follows:

Authority: 33 U.S.C. 3803 and 3821; 46 U.S.C. 3103, 3306, 3316, 3703; Department of Homeland Security Delegation No. 0170.1 and Aug. 8, 2011 Delegation of Authority, Anti-Fouling Systems.

2. Amend § 8.320 as follows:

a. In paragraph (b)(11), remove the word "and";

b. In paragraph (b)(12), remove the symbol "." and add, in its place, the text "; and"; and

c. Add paragraph (b)(13) to read as follows:

§ 8.320 Classification society authorization to issue international certificates.

* * * * *

(b) * * *

(13) International Anti-fouling System Certificate.

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Dated: December 5, 2011

J. G. LANTZ

Director of Commercial Regulations and
Standards, U. S. Coast Guard

[FR Doc. 2011-31595 Filed 12/08/2011 at 8:45 am;

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